

Appeal from a decision by the Alaska State Office, Bureau of Land Management, rejecting homesite application AA 58875.

Affirmed.

1. Alaska: Homesites--Settlements on Public Lands--Applications and Entries: Generally

BLM properly rejected a homesite purchase application where the applicant failed to show in conformity to 43 U.S.C. §§ 687a and 687a-1 (1982) that he had occupied a habitable house at his site for not less than 5 months each year for 3 years within 5 years of the date he filed his notice of claim

APPEARANCES: Robert E. Billstrom, Kodiak, Alaska, pro se; Gavin M. Frost, Esq., Office of the Regional Solicitor, Alaska Region, Anchorage, Alaska, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE ARNESS

Robert E. Billstrom has appealed from a May 17, 1993, decision of the Alaska Office, Bureau of Land Management (BLM), that rejected his application to purchase homesite AA-58875 situated in sec. 25, T. 11 N., R. 8 E., Copper River Meridian, Alaska. The BLM decision found that Billstrom did not have a habitable house on the homesite when he filed his purchase application on November 28, 1990, nor had he lived there for 5 months during 3 of the 5 years after he filed his notice of claim on June 9, 1986. Billstrom filed a timely notice of appeal.

The application at issue was governed by provisions of 43 U.S.C. §§ 687a and 687a-1 (1982), repealed effective Oct. 21, 1986 by P.L. 94-579 (1976), providing that a citizen could purchase a homesite ("homestead") after occupying a suitable site "in a habitable house not less than five months each year for three years," subject, however, to the limitation that "[a]pplication to purchase claims \* \* \* must be filed within five years after the filing of the notice of claim." Implementing regulations at 43 CFR Subpart 2563 repeat the statutory requirements for residency on the homesite in a habitable house for the minimum time specified by statute

and establish the time and manner of filing of claims and applications to purchase with BLM.

A field examination of Billstrom's homesite was conducted on August 23, 1991. Although the field examiner was not accompanied by Billstrom, one of his neighbors directed the examiner to the claimed land, where an "incomplete 18 X 20 foot frame cabin" was found and photographed. Inspection of the cabin lead the examiner to conclude that it was not a habitable house and was probably not located on the claimed tract of Federal land. Referring to an earlier relinquished homesite claim by Billstrom, the examiner described the unfinished construction he found:

Interviews with the applicant's neighbors verified that this was in fact the only cabin in the area belonging to the applicant. This cabin is actually located in the SE1/4 NE1/4 NE1/4 NW1/4 NE1/4 of Sec. 36. This location is closer to where the applicant originally described his claim, but it is still not actually within any of the land descriptions submitted by the applicant. The on-the-ground examination revealed that the applicant has never even finished this cabin. The structure has no windows, no doors, the roof is incomplete, and the upper ends are open. Furthermore, there is no insulation, stove, or heating device of any kind. The condition of the structure indicates that it has never been inhabited. The only sign of use at all is a small trash pile, which by no stretch of the imagination could be construed as to reflect even one five month period of use. Neither the 1986 or 1989 [aerial] photos reveal any other improvements in the area, nor were any noted on the ground.

Field Report of David Mushovic approved December 16, 1991.

The field examiner also interviewed neighbors concerning residency by Billstrom. From the reports given by them, he concluded that Billstrom had not resided on the claim for sufficient time to qualify as a purchaser of the tract in question. Id.

On July 2, 1992, BLM reported the findings by the field examiner to Billstrom in a notice entitled "additional information required" and pointed out that his claim of residency from April to September 1985 on the claimed land was apparently spent on a tract he relinquished on June 30, 1986, and therefore could not be credited as time spent on the instant claim. The finding by the examiner that Billstrom had not resided on the claimed tract in any subsequent year for at least 5 months was also reported and Billstrom was required to provide "evidence that he lived on his homesite claim for 5 months a year for three years and that the dwelling was habitable at the time of residence." (Emphasis in original.) In a letter filed July 20, 1992, Billstrom replied to the notice by requesting a year's delay to permit completion of construction and asking whether an alternative method of acquisition of the property might be available to him. BLM responded to this letter on July 29, 1992, and on May 17, 1993, issued the decision here under review that rejected Billstrom's purchase application.

On appeal to this Board, Billstrom argues that he spent "an extra 6 months more than I reported" at his homesite, while arguing that circumstances beyond his control beginning in December 1985 caused him to lose his driver's license and prevented him from living at his cabin. He contends that personal injury was a contributing cause of his inability to complete the cabin and suggests that personal difficulties during the time within which he was required to reside in a habitable house at his homesite should excuse exact compliance with statutory requirements.

[1] BLM correctly points out in answer to Billstrom that he has not alleged error in the decision appealed from, while he has admitted that no habitable house exists on the homesite. In order to comply with the Act of May 26, 1934, 43 U.S.C. §§ 687a and 687a-1 (1982), it was necessary that Billstrom should have resided on the site in a habitable house for not less than 5 months each year for 3 years within 5 years of filing his homesite claim (see also Departmental regulation 43 CFR 2563.1-1(c)).

In his application to purchase, Billstrom claimed residence at the site in 1985 from the beginning of April to the end of September; in 1986 from April to August; in 1987 from May until August; and in 1988 from May through September; he claimed no occupancy in 1989 or 1990. Departmental regulations, however, require that unless a notice of location is filed within 90 days after residence is initiated, no credit for occupancy of the homesite shall be allowed for times claimed prior to filing of the notice. See 43 CFR 2563.2-1(c). Billstrom filed his notice of location for the homesite here claimed on June 9, 1986. Consequently, BLM allowed no credit for occupancy prior to June 9, 1986. See Charlotte Lorraine Furgione, 8 IBLA 432, 434 (1972), and authorities cited. Disallowing Billstrom's claim of occupancy from April 1985 through May 1986, BLM credited June 1986 as the first month of his residence on the site. As a result of this computation, the first day of June began each year for the purpose of computing Billstrom's occupancy of his homesite, which ended on the last day of May in the following calendar year. See Cook v. DeHart Buren, 106 IBLA 294, 298 (1989).

Applying this calculation to the information supplied by Billstrom revealed that he had not occupied his homesite for at least 5 months during 3 of the 5 years immediately following filing of his notice of location in June 1986. (Consistent with the approach described in the Dehart Buren opinion, each of those years began on June 1 and ended on May 31) Since Billstrom has not challenged the finding of the field examiner who inspected his building site, it is clear on the record before us that he did not have a habitable house onsite during any of the years he claimed to be in residence between 1986 and 1990, even assuming that he was there during the times claimed. Although he now suggests that he understated the amount of time spent in residence by 6 months, he has not specified when that residence occurred, nor has he offered supporting evidence to refute the finding of fact by BLM that there was never a habitable structure at the homesite for his use. His explanation of the circumstances impeding his access to the homesite concedes that BLM's findings concerning his occupancy in a habitable house was correct.

It is therefore concluded that Billstrom has failed to show error in the May 1993 BLM decision rejecting his purchase application and that BLM correctly found that Billstrom failed to reside on the land claimed in a habitable house for at least 5 months each year for 3 years during the 5 years immediately following the filing of his claim. See 43 U.S.C. §§ 687a and 687a-1 (1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,, 43 CFR 4.1, the decision appealed from is affirmed.

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Franklin D. Arness  
Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge